

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (NPD) Nos. 3340 to 3343 of 2016

D. Parvathy

... Petitioner
in all CRPs

-Vs-

M/s. Amardeep
Represented by its Proprietor Kishore D Talraja
Shop No. 1 at Ground Floor and
1,2&3 at First Floor at 'A' Block,
No. 46, III Avenue, Anna Nagar,
Chennai - 600 102.

... Respondents
in all CRPs

Prayer in C.R.P. (NPD) Nos. 3340 of 2016 : Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act against the fair and decretal order made in R.C.A. No. 771 of 2006 on the file of the VIII Small Causes Court, Chennai dated 08.07.2013 in R.C.O.P. No. 321 of 2005 dated 17.11.2005 on the file of the XV Small Causes Court, Chennai.

Prayer in C.R.P. (NPD) Nos. 3341 of 2016 : Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act against the fair and decretal order made in R.C.A. No. 772 of 2006 on the file of the VIII Small Causes Court, Chennai dated 08.07.2013 in R.C.O.P. No. 322 of 2005 dated 17.11.2005 on the file of the XV Small Causes Court, Chennai.

Prayer in C.R.P. (NPD) Nos. 3342 of 2016 : Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent) Control Act against the fair and decretal order made in R.C.A. No. 773 of 2006 on the file of the VIII Small Causes Court, Chennai dated 08.07.2013 in R.C.O.P. No. 323 of 2005 dated 17.11.2005 on the file of the XV Small Causes Court, Chennai.

Prayer in C.R.P. (NPD) Nos. 3343 of 2016 : Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the fair and decretal order made in R.C.A. No. 774 of 2006 on the file of the VIII Small Causes Court, Chennai dated 08.07.2013 in R.C.O.P. No. 324 of 2005 dated 17.11.2005 on the file of the XV Small Causes Court, Chennai.

For Petitioner
in all CRPs : Mr. S. Wilson

For Respondent
in all CRPs : Mr. M. Ramalingam

COMMON ORDER

All these Civil Revision Petitions have been filed against the common order, dated 08.07.2013 passed by the Rent Control Appellate Authority in R.C.A. Nos. 771 to 774 of 2006 on the file of the VIII Court of Small Causes, Chennai, as those appeals were directed against the order, dated 17.11.2005 passed by the Rent Control Original Authority in R.C.O.P. Nos. 321 to 324 of 2005 on the file of the XV Small Causes Court, Chennai.

2. The revision petitioner / landlord filed the respective RCOPs against the respondent before the Rent Control Original Authority to fix the fair rent, where some fair rent has been fixed, however not satisfied with the same, the landlord preferred appeal in R.C.A. Nos. 771 to 774 of 2006 before the Rent Control Appellate Authority.

3. When the said RCAs are pending before the Appellate Authority, the revision petitioner / landlord filed an application in M.P. Nos. 482 to 485 of 2012 in R.C.A. Nos. 771 to 774 of 2006 respectively seeking a prayer to receive the documents and mark it as exhibits.

4. In the said applications, though the respondent was directed to file counter, and it had been adjourned for sometime till October 2012 for filing counter by the respondent / tenant, however at one point of time i.e. on 05.10.2012, the Rent Control Appellate Authority had directed that the said applications can be called for disposal along with the main RCAs.

5. In that circumstances, the main RCAs were taken up for hearing, after hearing both sides, those RCAs were disposed off through common order dated 17.11.2015, whereas the said Interlocutory Applications (MPs) filed by the landlord to receive the additional documents and to mark the same to establish their case for fixation of higher fair rent than the one fixed by the Rent Control Original Authority neither had been decided nor had been discussed in the order in the RCAs which is impugned herein.

6. Therefore, the appellants that as against the fixation of fair rent or modified fixation of fair rent made by the Rent Control Appellate Authority in the order impugned dated 17.11.2015, had filed these groups of revision petitions against the common order passed in RCAs.

7. Heard Mr. S. Wilson, learned counsel appearing for the revision petitioner and Mr. M. Ramalingam, learned counsel appearing for the respondent in all these revisions.

8. The learned counsel appearing for the revision petitioner would submit that, the Appellate Court insofar as the Rent Control Proceedings are concerned can very well receive additional evidence and appreciate the additional evidence and there can be no impediment in this regard. He would submit that, the law in this regard is well settled and in support of his contention, he has relied upon a decision of this Court made in C.R.P. (NPD) No. 1714 of 2006 dated 22.02.2007 in the matter of ***K.M. Mohamed Nooruddin vs P.Ellappan***, where he had relied upon the following passage:

" When additional evidence is sought to be adduced, the Appellate Authority can permit additional evidence if it feels that for the purpose of consideration of the matter on merits and proper disposal of the appeal, additional evidence is necessary. Appellate Authority may allow additional evidence, provided sufficient opportunity is afforded to the opposite party. To impose any blanket interdict to receive additional evidence would be against the spirit of Section 23 of the Act."

9. By relying upon the said judgment, the learned counsel would submit that, when the applications specifically filed by the

revision petitioner / landlord before the First Appellate Court seeking permission of the Court to make the additional evidence, such applications ought to have been allowed and at least on merits, the applications ought to have been decided. However though counter had been filed by the respondent, the learned Judge had directed those applications to be heard along with the RCAs and when the RCAs were decided, even those applications were not taken up for discussion on the said plea raised by the landlord through the said applications.

10. Therefore, the learned counsel would submit that, if the said applications are taken up for decision, certainly the landlord would have been in a position to establish the case as they wanted to rely upon a sale deed dated 22.11.2004 in respect of a similar property in the nearby vicinity or locality in the next road or next street.

11. In this context, Mr. M. Ramalingam, learned counsel appearing for the respondent would submit that, insofar as the legal proposition, as to whether the Rent Control Appellate Authority is empowered to receive the additional evidence and appreciate the same is concerned, absolutely there can be no quarrel, the Rent Control Appellate Authority can receive additional evidence.

12. However, insofar as the present issue is concerned, even in the main order, i.e., impugned herein made by the Appellate Authority in the respective RCAs by way of common order, those issues can be taken into account and the age of the building, amenities available in the building as well as the locality of the building had been gone into and accordingly the Rent Control Appellate Authority has given its findings, as to what rent can be fixed as a fair rent. In fact, some modification is made by the Rent Control Appellate Authority on the fair rent fixed by the Rent Control Original Authority and therefore, after having allowed, such a modified fixation of fair rent which is an enhanced one from the fixation of the Rent Control Original Authority, the revision petitioner / landlord have no further grievances.

13. The learned counsel appearing for the respondent would also submit that, insofar as the alleged sale deed dated 22.11.2004 is concerned, according to the learned counsel appearing for the revision petitioner that the landlord wanted to rely upon the said sale deed, it is located at II Avenue Anna Nagar, Chennai, whereas the subject property is located in III Avenue Anna Nagar, Chennai. In the

metropolitan city of Chennai, it is a known fact that, even in one particular street, if a particular building is located on the one side in the very same street or road, the value of the building may not be similar of the other building which is located to the other side of the street which will have a different value. Therefore, it cannot be automatically construed that, merely because a sale deed is produced by the landlord pertaining to the land sold in that locality, vicinity or in the next street, that would not *ipso facto* give any weightage for the landlord to proceed with the case and to establish that, the building in question in the same locality or the land also would fetch the same market value of the locality. Assuming that the application had been accepted by the Rent Control Appellate Authority, that would not have given any greater advantages or benefits to the landlord. Therefore because those applications filed by the landlord cannot make any difference, those orders which are impugned in the RCAs are not required to be re-looked or reviewed.

14. I have considered the said rival submissions made by the respective counsel appearing for the parties.

15. The only issue which cropped up in this case is that, whether the Rent Control Appellate Authority was in error to decide the appeals filed by the revision petitioner against the order passed by the Rent Control Original Authority in fixing the fair rent without even considering or deciding the application filed by the revision petitioner / landlord to receive additional evidence in order to establish the case of the landlord or not.

16. In order to explore the possibility of getting answer to the said question, in the aforesaid facts and circumstances, this Court is of the view that, since the law has been well settled in this regard that, under Section 23 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the Rent Control Appellate Authority has power to re-appreciate the evidence and also to receive the additional evidence at the appeal stage, if they felt that, such kind of additional evidence is required to be adduced.

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17. In this context, if the applications have been specifically filed by the petitioner herein, who is the landlord, in that applications

even though pleadings had been completed as the respondent filed counter, the Rent Control Appellate Authority should have decided the same on merits and once the applications are accepted, the additional evidence, the landlord wanted to produce should have been permitted to be produced and based on the additional evidence the issue raised in the main appeals could have been decided.

18. However, the Rent Control Appellate Authority had deferred the decision of the IA along with the RCAs and when the RCAs were decided, the Rent Control Appellate Authority not only missed to decide the IAs but not chosen to discuss the merits of the IAs.

19. These kind of disposal of all these RCAs without deciding these IAs, in the considered opinion of this Court, is certainly an erroneous act, for which, this Court feels that, the matter can be remitted back to the Rent Control Appellate Authority for appropriate decision in respect of those applications filed by the revision petitioner / landlord.

20. Since this Court in the revisional jurisdiction under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, is not supposed to re-appreciate the evidence and whatever evidence wanted to be produced by the revision petitioner / landlord by way of additional evidence cannot be gone into in this revision, there is no option except for remanding the matter back to the Rent Control Appellate Authority. In this context, the learned counsel appearing for the respondent would also usefully relied upon the following decision reported in *1999 (III) CTC 202, in the matter of M/s. The Calcutta Chemicals and Limited vs Taiyeb Yusufbhai Vakharia and another.*

21. In view of this legal position and by taking into account, the factual matrix of the case, where admittedly the applications filed by the revision petitioner / landlord before the First Appellate Court have not been disposed of, these issues are necessarily to be remitted back to the Appellate Authority for rehearing and decision. Accordingly, these Civil Revision Petitions are disposed of with the following directions:

- "(i) That the impugned orders in all these revision petitions are hereby set aside, the matters are remitted

back to the Rent Control Appellate Authority who passed the impugned order for rehearing.

(ii) In the exercise of rehearing, the Rent Control Appellate Authority shall decide the respective applications in M.P.Nos.482 to 485 of 2012 in R.C.A. Nos. 771 to 774 of 2006 filed by the revision petitioner / landlord on merits by giving reasonable opportunity to both sides. Such decision on those applications may be made by the Rent Control Appellate Authority within a period of two months from the date of receipt of a copy of the order."

22. If any decision is made in those applications in favour of the revision petitioner, it is open to the Appellate Court to receive the additional documents to substantiate the case of the landlord. If the Appellate Court decides otherwise, i.e., rejection of those applications accordingly, the main issue raised by the landlord in the appeals can be decided. In this regard, it is open to both parties to canvass the merits to substantiate their contention.

23. With these directions and observations, these Civil Revision Petitions are ordered accordingly. No costs.

26.11.2019

Index: Yes / No

Speaking order / Non speaking order

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To

1. The VIII Small Causes Court,
Chennai.
2. The XV Small Causes Court,
Chennai.



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R. SURESH KUMAR, J.

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